

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

FILED

UNITED STATES DISTRICT COURT

MAR 28 2018

for the

District of _____

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

Division _____

AMENDED

JOHN ABERNATHY

Case No. 18-302

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one) ☒ Yes ☐ No

Macs Towing of Homestead

CITY OF PITTSBURGH, STATE OF
PENNSYLVANIA, BEN SMITH, CITY OF
PITTSBURGH ATTORNEY(INDIVIDUAL CAPACITY),

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	JOHN ABERNATHY
Street Address	4122 INLAND AVE
City and County	WEST MIFFLIN, ALLEGHENY
State and Zip Code	PENNSYLVANIA, 15122
Telephone Number	412-551-0572
E-mail Address	john_abernathy@hotmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	CITY OF PITTSBURGH
Job or Title <i>(if known)</i>	
Street Address	414 GRANT ST, #313
City and County	PITTSBURGH, ALLEGHENY
State and Zip Code	PENNSYLVANIA, 15122
Telephone Number	412-255-2015
E-mail Address <i>(if known)</i>	

Defendant No. 2

Name	STATE OF PENNSYLVANIA
Job or Title <i>(if known)</i>	ATTORNEY GENERALS OFFICE
Street Address	564 FORBES AVE
City and County	PITTSBURGH, ALLEGHENY
State and Zip Code	PENNSYLVANIA, 15219
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 3

Name	BEN SMITH (INDIVIDUAL CAPACITY)
Job or Title <i>(if known)</i>	PITTSBURGH CITY ATTORNEY
Street Address	
City and County	PITTSBURGH, ALLEGHENY
State and Zip Code	PENNSYLVANIA
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 4

Name	MACS TOWING OF HOMESTEAD
Job or Title <i>(if known)</i>	
Street Address	1200 RIVER RD
City and County	HOMESTEAD, ALLEGHENY
State and Zip Code	PENNSYLVANIA, 15120
Telephone Number	412-461-2615
E-mail Address <i>(if known)</i>	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

SEIZURE OF MY PROPERTY WITHOUT PROPER PRE OR TIMELY POST SEIZURE DUE
PROCESS IN VIOLATION OF MY FIFTH AND FOURTEENTH AMENDMENT RIGHTS, VIOLATION
OF 42USC1983

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* JOHN ABERNATHY, is a citizen of the
State of *(name)* PENNSYLVANIA.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated
under the laws of the State of *(name)* _____,
and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* CITY OF PITTSBURGH, is a citizen of
the State of *(name)* PENNSYLVANIA. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, (name) STATE OF PENNSYLVANIA, is incorporated under the laws of the State of (name) _____, and has its principal place of business in the State of (name) _____.

Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

ON JANUARY 11, 2018, IN THE CITY OF PITTSBURGH, PENNSYLVANIA ON BLACKHAWK ST, DEFENDANT, CITY OF PITTSBURGH EXECUTED THE SEIZURE OF MY PROPERTY, A 2008 TOYOTA PRIUS. MACS TOWING OF HOMESTEAD TOWED AND HAS HELD MY PROPERTY SINCE THIS POINT. THE STATE OF PENNSYLVANIA VEHICLE CODE WAS USED AS A BASIS FOR SEIZING MY PROPERTY THE CITY OF PITTSBURGH AND MR SMITH WHEN SENT A CERTIFIED LETTER INDICATING AN INTENT TO SUE FAILED TO PROVIDE PROPER DUE PROCESS FOR THE SEIZURE

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

AT THIS TIME MY PROPERTY IS STILL BEING HELD AT MACS TOWING IN HOMESTEAD, THE CITY OF PITTSBURGH AND BEN SMITH DID NOT PROVIDE A TIMELY OR IMPARTIAL FACT FINDER OF FACT FOR THE SEIZURE OF MY PROPERTY. THE STATE OF PENNSYLVANIA BY HAVING A BROAD VEHICLE CODE WITHOUT REASONABLE TIMETABLES FOR LOCAL MUNICIPALITIES TO HOLD HEARINGS WITH AN IMPARTIAL FINDER OF FACT, PRE OR TIMELY POST SEIZURE HEARINGS, ENABLES AN OPEN ENDED SEIZURE OF MY PROPERTY.

PROPER AND TIMELY DUE PROCESS IS A BASIC TENET OF THE LEGAL SYSTEM THAT THE GOVERNMENT ENTITIES AND MR SMITH SHOULD REASONABLY HAVE KNOWLEDGE OF. THE PLAINTIFF ASKS FOR IMMEDIATE RELEASE OF HIS PROPERTY FROM MACS TOWING OF PITTSBURGH WITHOUT FINANCIAL ENCUMBERMENTS AND \$5000 EACH FROM DEFENDANTS, CITY OF PITTSBURGH, STATE OF PENNSYLVANIA, AND BEN SMITH.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

3/28/18

Signature of Plaintiff

Printed Name of Plaintiff

JOHN ABERNATHY

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address